

AMENDED IN SENATE APRIL 14, 2005

SENATE BILL

No. 400

Introduced by Senator Kuehl
(Coauthors: Senators Bowen, Ortiz, and Romero)
(Coauthors: Assembly Members Chan, Hancock, and Leno)

February 17, 2005

An act to add Section 22980.05 to, and to repeal and add Section 22974.8 of, the Business and Professions Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as amended, Kuehl. Tobacco licensing.

The Stop Tobacco Access to Kids Enforcement (STAKE) Act prohibits the furnishing of tobacco products to, and the purchase of tobacco products by, any person under the age of 18 years and authorizes the assessment of civil penalties for a violation of the act.

The California Cigarette and Tobacco Products Licensing Act of 2003 provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California and prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are in compliance with licensure requirements.

The act requires the board to take action against a retailer convicted of a violation of either the STAKE Act or the Penal Code, according to a schedule that includes a warning letter and training for a first conviction, fines for the 2nd and 3rd convictions within 12 months, 90-day license suspension for the 4th to the 7th convictions within 12 months, and license revocation upon the 8th conviction within 24 months. The act requires the board to notify the retailer prior to suspending or revoking a retailer's license to sell cigarette and tobacco

products. The act authorizes the retailer to appeal the board's decision to suspend or revoke the retailer's license within 30 days after the notice of suspension or revocation. The act makes the board's authority to take action inoperative on or after the date of the release of results from the survey undertaken by the State Department of Health Services to comply with the federal Public Health Service Act showing that less than 13% of youth were able to purchase cigarettes.

This bill would repeal the above provisions of the act and would instead make any conviction *or final administrative adjudication* for a violation by a *retail* licensee of the STAKE Act or the Penal Code grounds for suspension or revocation of a license to sell cigarette and tobacco products. If the board finds that there are grounds for suspending or revoking a *retail* license, the bill would require the board to impose sanctions, including a 30-day license suspension for the first conviction within a 5-year period, a 90-day suspension for the 2nd conviction within a 5-year period, a 120-day suspension for the 3rd conviction within a 5-year period, a 365-day suspension for a 4th conviction within 5 years, and permanent revocation for a 5th conviction within 5 years. The bill would authorize any licensee whose license is suspended or revoked to petition the board for a redetermination of that suspension or revocation and would require the board, if the petition is filed within a 30-day period, to reconsider the suspension or revocation and, if the licensee has so requested in the petition, grant the licensee an oral hearing.

This bill would require a state or local law enforcement agency to notify the board of any ~~violation over which the board has jurisdiction that involves a~~ *conviction or final administrative adjudication for a violation of the STAKE Act or the Penal Code that involves a retail* licensee or licensed premises, within 30 days of a final judgment. By increasing the duties of a local agency, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22974.8 of the Business and
2 Professions Code is repealed.
3 SEC. 2. Section 22974.8 is added to the Business and
4 Professions Code, to read:
5 22974.8. (a) In addition to any other civil or criminal penalty
6 provided by law, any conviction ~~for a violation by a licensee of~~
7 *or final administrative adjudication for a violation by a retail*
8 *licensee of underage sales laws pursuant to the STAKE Act*
9 *(Division 8.5 (commencing with Section 22950) or Section 308*
10 *of the Penal Code is grounds for suspension or revocation of a*
11 *license to sell cigarette and tobacco products.*
12 ~~(b) If a conviction for a violation described in subdivision (a)~~
13 ~~is determined by the state or local law enforcement agency to~~
14 ~~have been committed by an agent of a licensee, the board shall~~
15 ~~deem this determination to be true. This board action may be~~
16 *(b) A conviction or final administrative adjudication for a*
17 *violation described in subdivision (a) that was committed by an*
18 *agent or employee of a retail licensee shall be conclusively*
19 *presumed by the board. This board action may be appealed*
20 *pursuant to subdivision (d).*
21 (c) If the board finds that there are grounds for suspending a
22 *retail* license, the board shall impose the following sanctions for
23 a violation of any provision described in subdivision (a) within a
24 five-year period by a *retail* licensee or an agent or employee of a
25 *retail* licensee:
26 (1) Upon a finding by the board of a first violation, the license
27 shall be suspended for 30 days.
28 (2) Upon a finding by the board of a second conviction, the
29 license shall be suspended for 90 days.
30 (3) Upon a finding by the board of a third conviction, the
31 license shall be suspended for 120 days.
32 (4) Upon a finding by the board of a fourth conviction, the
33 license shall be suspended for 365 days.
34 (5) Upon a finding by the board of a fifth conviction, the
35 license shall be revoked permanently and the former licensee

1 shall not apply for, or be granted, a license at any time in the
2 future.

3 (d) (1) Any licensee whose license is suspended or revoked
4 under subdivision (c) may petition the board for a
5 redetermination of that suspension or revocation within 30 days
6 of service upon the licensee of notice of the suspension or
7 revocation. If a petition for redetermination is not filed within the
8 30-day period, the suspension or revocation shall become final at
9 the expiration of the 30-day period.

10 (2) Every petition for redetermination shall be in writing and
11 shall state the specific grounds upon which the petition is
12 founded. The petition may be amended to state additional
13 grounds at any time prior to the date on which the board issues its
14 order or decision upon the petition for redetermination.

15 (3) If the petition for redetermination is filed within the 30-day
16 period, the board shall reconsider the suspension or revocation
17 and, if the licensee has so requested in the petition, shall grant the
18 licensee an oral hearing and shall give the licensee at least 10
19 days notice of the time and place of the hearing. The board may
20 continue the hearing from time to time as may be necessary.

21 (4) The order or decision of the board upon a petition for
22 redetermination becomes final 30 days after mailing notice of
23 that order or decision to the licensee.

24 (5) The notice required by this subdivision shall be served
25 personally or by mail. If by mail, the notice shall be placed in a
26 sealed envelope, with postage paid, addressed to the licensee at
27 the address as it appears in the records of the board. The giving
28 of notice shall be deemed complete at the time of deposit of the
29 notice in the United States Post Office, or a mailbox, subpost
30 office, substation or mail chute, or other facility regularly
31 maintained or provided by the United States Postal Service,
32 without extension of time for any reason. In lieu of mailing, a
33 notice may be served personally by delivering to the person to be
34 served, and service shall be deemed complete at the time of that
35 delivery. Personal service to a corporation may be made by
36 delivery of a notice to any person designated in the Code of Civil
37 Procedure to be served for the corporation with summons and
38 complaint in a civil action.

39 ~~(e) Convictions of violations by a~~ *(e) under Section 308 of the*
40 *Penal Code or final administrative adjudications for violations of*

1 *the underage sales provisions of the STAKE Act by a retail*
2 *licensee at one retail location may not be accumulated against*
3 *other locations of that same licensee.*

4 ~~(f) Convictions of violations accumulated against a prior retail~~
5 ~~owner under Section 308 of the Penal Code or final~~
6 ~~administrative adjudications for violations of the underage sales~~
7 ~~provisions of the STAKE Act by a retail licensee at a licensed~~
8 ~~location may not be accumulated against a new retail owner at~~
9 ~~the same retail location.~~

10 SEC. 3. Section 22980.05 is added to the Business and
11 Professions Code, to read:

12 22980.05. (a) A state or local law enforcement agency shall
13 ~~notify the board of any violation over which the board has~~
14 ~~jurisdiction that involves a convictions under Section 308 of the~~
15 ~~Penal Code or final administrative adjudications for violations of~~
16 ~~the underage sales provisions of the STAKE Act that involve a~~
17 ~~retail licensee or licensed premises, within 30 days of a final~~
18 ~~judgment.~~

19 (b) Notice by a state or local law enforcement agency to the
20 board shall include all of the following:

21 (1) A certified copy of the final judgment for a criminal or
22 civil case.

23 (2) The retailer's license information for the location at which
24 the violation occurred.

25 (3) If the judgment is only against an *agent or* employee, the
26 result of an administrative hearing concluding that the sales clerk
27 was an agent of the retailer at the time of the violation.

28 (4) *Failure by a state or local law enforcement agency to*
29 *notify the board within 30 days of a final judgment pursuant to*
30 *subdivision (a) shall not affect the validity of the violation for*
31 *purposes of Section 22974.8.*

32 (c) *A state or local law enforcement agency shall not be*
33 *subject to any penalties contained in this subdivision for failure*
34 *to notify the board within 30 days of a final judgment as required*
35 *by subdivision (a).*

36 SEC. 4. If the Commission on State Mandates determines that
37 this act contains costs mandated by the state, reimbursement to
38 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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